

S.B. Civil Misc. Appeal No.984/2005

United India Insurance Co. Ltd.

vs.

Smt. Luni Devi and others.

Date : 18.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manoj Bhandari, for the appellant.

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Heard learned counsel for the appellant.

The contention of the appellant is that the claimant submitted a claim petition before the MACT on the basis of cause of action i.e. accident occurred on 29.4.1988 and thereafter, withdrew that claim petition from the Tribunal and submitted complaint before Workmen's Compensation Commissioner and before that, no notice under Section 10 of the Workmen's Compensation Act, 1923 (for short 'the Act') was served upon the appellant, therefore, according to learned counsel for the appellant, the claim petition itself was not maintainable in view of the language used in Section 10(1) of the Act which starts with a language that, "No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given", therefore, according to learned counsel for the appellant, the learned Commissioner committed serious error of law in entertaining the claim petition and awarding compensation in favour of the claimants.

I have considered the submissions of learned counsel for the appellant.

It is clear from the facts mentioned in the impugned award itself that the claimants submitted that for want of knowledge about legal provisions, they submitted claim petition before the MACT and when they came to know about the correct legal position, they withdrew the claim petition from MACT only for the purpose of filing the proper claim petition before the appropriate forum.

IN view of the above facts, it is clear that the claim petition was withdrawn from MACT and thereafter, submitted before the learned Workmen's Compensation Commissioner.

This is not in dispute that the appellant was party before the MACT and, therefore, the appellant had full knowledge of the claim of the claimants. It is clear from Section 10(1) of the Act that there is no prescribed form for the notice which is required to be served upon the employer. Not only this, Proviso 4 to Section 10(1) provides that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of the claim. In addition to this, Proviso 5 specifically provides that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time.

In view of the above statutory provisions, the

intention of the Legislature is amply clear that the notice can be given in any form may it be oral or may it be by implication. Not only this, but in view of Proviso 5 to Section 10(1), the claim can be entertained without notice.

In the present case, the learned Commissioner very carefully looked into the facts of the case and condoned the delay also and thereafter decided the matter on merits.

In view of the above, the Workmen's Compensation Commissioner has not committed any error of fact or of law in passing the impugned award.

Accordingly, this misc. appeal having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S. Phophaliya